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May 9, 2005

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

REDACTED CONFIDENTIAL FILING – PUBLIC VERSION

Re: PAETEC Communications, Inc.
Confidential Information Submitted as Part of Comments
WC Docket No. 05-75

Dear Ms. Dortch:

On behalf of PAETEC Communications, Inc. ("PAETEC"), and pursuant to the Protective Order issued by the Commission on March 10, 2005, transmitted herewith are two redacted copies of the comments filed by PAETEC in the above-referenced proceeding. As required by the Protective Order, a copy of the non-public confidential information is being submitted contemporaneously under separate cover.

Please acknowledge this submission by date-stamping and returning the extra copy of this letter. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned at (585) 340-2500.

Respectfully submitted,

John B. Messenger
Vice President and Associate General Counsel
PAETEC Communications, Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Verizon Communications, Inc., and	)	WC Docket No. 05-75
MCI, Inc.	)	
Applications for Approval of	)	
Transfer of Control	)	
	)	

COMMENTS OF PAETEC COMMUNICATIONS, INC.

PAETEC Communications, Inc. ("PAETEC") hereby submits its comments in the above-captioned proceeding regarding the proposed merger between Verizon Communications, Inc. ("Verizon") and MCI, Inc. ("MCI") (collectively, the "Applicants").

I. INTRODUCTION

PAETEC is a provider of competitive local, long distance, data, and Internet service based in Rochester, NY. PAETEC's geographic service areas are focused primarily in the northeastern United States, Florida, Chicago, and southern California, although PAETEC provides long distance service throughout the 48 contiguous states. The company concentrates on providing high-quality telecommunications services to customers with demands that require T-1 capacity levels or greater. PAETEC's customers are mainly medium-size and larger business customers, which include subscribers in vertical markets such as hotels, hospitals, and universities, as well as government and private firms.

Unlike most typical competitive local exchange carriers ("CLECs"), which provide telecommunications service through unbundled network elements ("UNEs"), local resale, or through combination of UNEs and their own facilities, PAETEC does not rely on UNEs at all. Rather, PAETEC relies almost exclusively on special access for all of its "last mile" connectivity. PAETEC's network is comprised of its own switches, which it uses to provide

both local and long distance service. It leases DS-3 transport capacity from various competitive access providers ("CAPs"), such as MCI's MFS subsidiaries,[1] to connect each switch to various points of presence ("POPs") distributed throughout PAETEC's service territory. In order to reach its subscribers, PAETEC purchases T-1 special access service from incumbent local exchange carriers ("ILECs") like Verizon to make the connection between the customer premises and the nearest PAETEC POP.

PAETEC has a relatively conservative network planning strategy whereby the company generally does not order circuits until there is a ready-customer to be served by such circuits. That way, operational dollars are not needlessly expended by constructing facilities to an ILEC end office while waiting for customers to sign up for service. PAETEC's self-owned switches, in combination with leased transport and special access facilities, results in a core network deployment strategy that requires no UNE loops, collocation, UNE transport, enhanced extended loops (or EELs), or dark fiber.[2]

PAETEC's measured-growth strategy has worked extremely well. In PAETEC's first five full years of operation, the company's gross annual revenues increased from less than $24 million to over $360 million. PAETEC has been EBITDA positive since the fourth quarter of 2001, and has generated positive net income continuously since the fourth quarter of 2002. In 2004, the company had revenues of $ 413 million and net income of $ 77.6 million. Unlike many other competitive telecom startups, PAETEC has never gone through a bankruptcy or

[1] MCI's predecessor, Worldcom, acquired MFS Communications Company, Inc., and its operating subsidiaries in 1996. The MFS operating subsidiaries that are part of this proceeding are detailed in Exhibit 2 of MCI's Application.

[2] Recently, PAETEC has used UNE-P on a very limited basis, primarily to serve smaller branch locations of some of its customers. However, UNE-P is a very minor component of PAETEC's overall service offerings.

financial reorganization, but has managed to grow successfully while honoring its commitments to all of its creditors and investors.

As successful as PAETEC has been in the competitive telecommunications marketplace, its network and the continued growth of its business is dependent on the availability of facilities from competitive access providers like MCI and AT&T. Unlike many commenters in this proceeding, PAETEC does not generally oppose the proposed merger between Verizon and MCI. However, as further discussed below, the proposed merger of Verizon and MCI, and the resulting incorporation of the MFS subsidiaries into the Verizon corporate umbrella, will have an adverse effect on the competitive landscape. Accordingly, PAETEC urges the Commission to impose certain conditions on the transaction, and specifically, to require that MCI divest its CAP facilities to ensure that the market for competitive access services is not skewed in favor of the ILECs as a result of the merger.

II. DISCUSSION

A. Transport Facilities Must Continue to be Available to Competitive Carriers Like PAETEC

In their Application, Verizon/MCI assert that the "combination of Verizon's and MCI's complementary assets and expertise will strongly promote the public interest."[3] However, as shown below, the concentration of the two largest CAP operations (MCI and AT&T) with the two largest RBOCs (Verizon and SBC) would reduce competitive options to carriers like PAETEC for interoffice transport services, and result in increased costs to consumers. By imposing appropriate conditions on the Verizon-MCI and SBC-AT&T mergers, the Commission will ensure that carriers will continue to have access to necessary facilities in a competitive

[3] Verizon Communications Inc., and MCI, Inc., Applications for Approval of Transfer of Control, Exhibit 1, Public Interest Statement ("Public Interest Statement"), p.10.

environment to provide innovative and cost-effective telecommunications services to their customers.

When purchasing interoffice transport to connect its POPs and switches, PAETEC can generally select from at least several CAPs to provide the necessary facilities, although the choices may be severely limited on certain routes. The presence of competitive alternatives keeps prices in check, and enables PAETEC to keep its infrastructure costs lower. This, in turn, results in better prices for PAETEC's customers. Oftentimes, the company that is able to provide the lowest cost and most reliable facilities necessary to link PAETEC's POPs and switches is MCI's subsidiary, MFS. Specifically, MFS currently supplies PAETEC with approximately **[begin confidential information] [end confidential information]** of all of its overall leased DS3 capacity from the PAETEC switch to the ILEC end office. Within Verizon territories, that percentage is approximately **[begin confidential information] [end confidential information]**. In each case, the MFS facilities offer an average of a **[begin confidential information] [end confidential information]** pricing differential versus comparable ILEC facilities.

It is critical that MFS's services not be subsumed and integrated into Verizon's overall corporate structure and rate plan because of the negative impact that will have on the ability of carriers like PAETEC to obtain transport at competitive prices. This is especially important given that AT&T is in the process of being merged with SBC. Currently, AT&T and MCI are the two largest CAPs in the United States. Through the near-simultaneous merger of Verizon with MCI, and SBC with AT&T, the CAPs that have provided competitive alternates to DS3 transport facilities to those offered by the ILECs will now be under RBOC control. The prospect of having each of these companies' CAP operations under the control of an RBOC will

significantly diminish competition, and raises concerns from the standpoint of pricing and availability.

The combined operations of Verizon and MCI would result in undue in-region concentration of transport facilities, which would enable the combined company to engage in anti-competitive behavior. There would be no incentive for Verizon to maintain MFS's transport prices at current levels post-merger because in many locations, Verizon and MFS's transport operations overlap. Given that MFS's prices are lower than those of Verizon, the merged company would, in essence, be competing with itself. Verizon would likely increase MFS's prices to match those of its ILEC operations to avoid inter-division competition, which would result in increased prices to competitive carriers like PAETEC that rely on DS3 connectivity.

In areas where Verizon and MFS's transport operations are not duplicative, Verizon could engage in behavior that would favor its own operations to the detriment of other carriers. In such areas, Verizon would benefit from the availability of facilities that it does not currently have because it would no longer have to pay to obtain such services from other carriers. It is reasonable to assume that Verizon would utilize MFS's facilities to support its own retail operations, and limit the availability of interoffice capacity to competitors.

Indeed, Applicants can eliminate competitors by utilizing price squeeze techniques through the vertical integration of their operations. Verizon could engage in price squeeze behavior to promote its own retail operations because any increases in MFS's wholesale prices will be an internal accounting exercise that will not affect the merged entity as a whole. However, such increase will have a real-world impact on carriers that use the same DS3 transport as Verizon's out-of-region operations do because such carriers must purchase them at arms-length. Increases in transport rates paid by PAETEC and similarly situated CLECs will

necessarily have an adverse effect on their ability offer telecommunications services to their customers at prices competitive to Verizon's. Ultimately, the increased costs will be passed through to consumers in the form of higher rates and reduced service levels. Given that many CLECs are already in precarious financial conditions, those carries could be forced to cease operations, which would further erode the competitive telecommunications marketplace.

B. CLECs That Utilize DS3 Transport Services from MFS Cannot Easily Move Away to Alternative Carriers

As discussed above, PAETEC purchases special access T-1s to carry traffic from the customer premises to PAETEC's POP, and DS3s are used to carry the traffic to PAETEC's switches. In order to receive more favorable pricing from MFS, CLECs like PAETEC have entered into long-term contracts for DS3 service. If Verizon acquires MCI's CAP operations, and begins to increase PAETEC's existing DS3 transport charges to avoid intra-company competition, or to engage in anti-competitive price squeeze behavior, PAETEC will be unable to switch easily to an alternative carrier to reduce its network costs.

A typical PAETEC DS3 circuit is used to carry traffic from multiple customers using special access T-1s. Each DS3 can accommodate up to 28 T-1 circuits. Each of those T-1s is ordered at a different time, depending on the needs of PAETEC's customers, and the underlying contracts for each of those T-1s have different termination dates. In the event that Verizon decides to increase MCI's DS3 charges at the expiration of the DS3 service contract, PAETEC cannot simply decide to "pull the plug" and move to a lower-priced carrier, assuming that one even exists on the particular route being serviced. Theoretically, PAETEC could purchase DS3 service from another provider and move all 28 T-1s that feed into the MCI-provided DS3 to the new provider. However, the logistical burden and transaction costs involved in that transition require, as a practical matter, that PAETEC stay with MCI.

The termination date of the DS3 service contract is not co-terminous with those for the T-1s, and the DS3 circuit must be continued to avoid disruption of service to customers. If PAETEC were to attempt to move the T-1s to the new DS3 circuit, PAETEC would be charged 28 separate disconnection charges by the ILEC for early termination of the T-1 lines, and 28 separate charges to reconnect those T-1s to the new DS3. PAETEC would also incur early termination charges for retiring the MCI DS3 from service. Given that PAETEC literally has hundreds of DS3 lines, which translates into thousands of T-1s, this would be a labor intensive and cost-prohibitive exercise. Moreover, the transition of service from MCI to another DS3 vendor would involve the disruption of service to PAETEC's customers while the T-1s are being moved, which would inconvenience customers and damage PAETEC's business relationship with its subscribers. For all practical purposes, once PAETEC orders a particular DS3 circuit, that circuit is "hard wired" into PAETEC's network, and cannot be replaced without significant and costly effort.

C. APPLICANTS' ASSERTION THAT THERE IS A SURPLUS OF VIABLE ALTERNATIVE NETWORKS IS UNFOUNDED

The Washington Post recently observed that "[i]f the AT&T and MCI takeovers are approved by the Federal Communications Commission and the Department of Justice, they will all but eliminate the independent long-distance business that flowered after regulators forced phone companies to share their lines."[4] This will be particularly true if the FCC permits the Verizon/MCI merger to take place without addressing the need to maintain the availability of CAP services to competitive carriers like PAETEC. Without those services, carriers like PAETEC, who rely on high capacity interoffice transport services provided by carriers like MCI

[4] Jonathan Krim, Qwest Ends Pursuit as MCI Takes Verizon Bid, Wash. Post, May 3, 2005 at A1.

and AT&T, will have few viable alternatives for connectivity to provide telecommunications services to their customers.

Applicants state that "[a]ny concerns about lost competition are insubstantial both by themselves, and weighed against the pro-competitive benefits of the transaction."[5] However, it is the very existence of competition that enables consumers to enjoy lower prices and higher quality services as competitive pressures on ILECs like Verizon keep their rates in check, and force them to innovate to lure subscribers away from other carriers. Applicants assert that there are a "range of CLECs, such as XO, US LEC, PAETEC, and Time Warner Telecom," that focus on serving medium and large enterprise customers, and that the transaction will have no negative effect on them.[6] In support of its position, Applicants offer data in areas where there is extensive competition from multiple competitive fiber providers.[7] However, rather than understating the extent to which competing providers have deployed fiber in those areas, as suggested by Applicants, that data is actually overstated, probably by a significant amount.

Applicants rely on, among others, the Lew/Lataille Declaration in support of their position that there is extensive competition from multiple providers of high-capacity local access services.[8] However, Applicants' analysis is based on the assumption that the CLEC networks "involve the use of a CLEC's own facilities."[9] PAETEC is included among those carriers in many of the larger MSA markets analyzed by Applicants as having its own network. While PAETEC's telecommunications network includes PAETEC-owned switches, PAETEC does not

[5] Public Interest Statement at 18.

[6] Id. at 30.

[7] Id. at 32.

[8] Lew/Lataille Decl. ¶ 14-15, Ex. 5.

[9] Id., Ex. 5 at 1.

currently own its own fiber facilities, and therefore it relies heavily on leased high-capacity lines from carriers like MCI and AT&T in order to connect to its POPs. Other CLECs included in MCI's data also utilize high-capacity transport obtained from other carriers like MCI and AT&T for their networks.

In essence, Applicants are using their own network to support their argument that there are abundant alternative high-capacity transport providers. However, if MCI's CAP operations are folded into Verizon's network, many of those providers, including PAETEC, will be reduced to dependence on the ILEC for transport services. Given that carriers like PAETEC lease much of their transport facilities from other carriers, Applicants' data does not provide a true representation of the extent to which competition would be affected by the proposed merger.

III. REMEDY

The proposed Verizon/MCI and SBC/AT&T mergers would bring two of the strongest and most pervasive transport providers under RBOC control. As explained above, Verizon would have little incentive to maintain the status quo, and would likely engage in behavior that would adversely affect competition to the detriment of consumers. The FCC should impose appropriate merger conditions on the transaction to protect competition. Even if Verizon were to give assurances that it will take steps to ensure that transport services are available and priced at competitive levels, history has shown that such assurances are often difficult to enforce.[10]

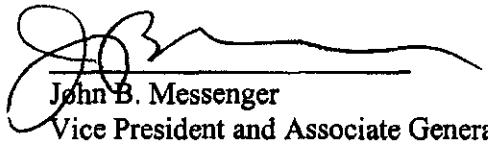
[10] For example, Verizon's approval to provide in-region long distance services was based in part on its commitment to continue providing UNE-P to competitors. See, e.g., In the Matter of Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware, Memorandum Opinion and Order, 17 FCC Rcd 18660 (2002). However, Verizon later successfully petitioned for discontinuance of UNE-P through the Commission's Triennial Review Remand Order proceeding. See, In the Matter of Unbundled Access to Network

The Commission should condition grant of the Application for the proposed transaction on the divestiture of MCI's CAP operations. This is the only remedy that will prevent undue in-region concentration of high-capacity transport services, and ensure that Verizon does not engage in anticompetitive behavior through the manipulation of internal operations and transport pricing to adversely affect the competitive landscape. Keeping MCI's CAP operations free from RBOC influence will ensure the availability of critical transport services at competitive rates, and level the playing field for all carriers.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, PAETEC Communications, Inc., respectfully urges the Commission to impose conditions on the proposed merger of Verizon and MCI, and require MCI to divest its competitive access operations, including those provided by its MFS operating subsidiaries.

Respectfully submitted,



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Date: May 9, 2005

Elements: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand, WC Docket No. 04-313; CC Docket No. 01-338, (rel. Feb. 4, 2005).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of May, 2005, a true and correct copy of the foregoing Comments of PAETEC Communications, Inc., was served via electronic mail or first class mail (indicated by *), postage prepaid, on the following:

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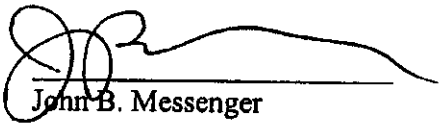

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